

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 12, 2006

**STATE OF TENNESSEE v. JOSHUA P. LOMAX**

**Direct Appeal from the Circuit Court for Humphreys County**  
**Nos. 9973A, 10602     George C. Sexton, Judge**

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**No. M2005-02854-CCA-R3-CD - Filed January 5, 2007**

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The defendant, Joshua P. Lomax, appeals the trial court's revocation of his community corrections sentence, arguing that the court abused its discretion by revoking his sentence based on his failure to pay court costs without first determining whether his nonpayment was willful. Following our review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ALAN E. GLENN, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

William B. Lockert, III, District Public Defender, and Haylee A. Bradley, Assistant Public Defender, for the appellant, Joshua P. Lomax.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Dan M. Alsobrooks, District Attorney General; and Lisa C. Donegan, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

On August 9, 2005, Lance Parker, supervisor of the defendant's community corrections sentence, filed a violation warrant against the defendant in the Circuit Court of Humphreys County, alleging that the defendant had violated four conditions of his sentence. Specifically, Parker alleged that the defendant had tested positive for amphetamines and methamphetamines on June 2, 2005; had not made regular payments on his court costs; had not maintained full-time employment; and had not regularly performed his community service work.

At the beginning of the October 27, 2005, revocation hearing, the defendant pled guilty to the violations contained in the warrant but nevertheless requested that he be granted a full hearing.

The State, therefore, called as a witness Lance Parker, the community corrections supervising officer for the district, who testified that he had been supervising the defendant's eight-year community corrections sentence. He said the defendant had tested positive for drugs in a field test in his office, that the results of the test had been sent to Aegis Laboratories for confirmation, and that the test had been returned from the laboratory marked positive for the presence of amphetamine and methamphetamine. Parker identified the laboratory report of the drug test, which was then admitted as an exhibit to the hearing. Parker further testified that the defendant had not made any payments on his court costs since 2001, had not maintained regular employment, and had performed only forty-one hours of the 200 hours of community service work he had been ordered to complete. He said that the defendant had been on community corrections for one year and should have completed all 200 hours of his community service work within that year.

The defendant testified that he had no proof to offer but then added that he was attending a treatment program at the Middle Tennessee Treatment Center every day.

At the conclusion of the hearing, the trial court found the defendant to be in violation of his community corrections sentence, revoked the sentence, and ordered that the defendant serve his eight-year sentence in confinement.

### **ANALYSIS**

On appeal, the defendant cites State v. Bernita Hogan, No. M2002-00808-CCA-R3-CD, 2003 WL 1787312, at \*3 (Tenn. Crim. App. Apr. 4, 2003), perm. to appeal denied (Tenn. Sept. 8, 2003), to argue that the trial court abused its discretion by revoking his community corrections sentence based on his failure to pay court costs without first determining whether he had the ability to pay those costs. The State argues that the trial court was not required to inquire into the defendant's ability to pay court costs before finding the defendant in violation of his community corrections sentence, as the defendant admitted to all the charges contained in his violation warrant. We agree with the State.

The trial court may revoke a community corrections sentence upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his sentence. See State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). "The judgment of a trial court in this regard will not be disturbed on appeal unless it appears that there has been an abuse of discretion." Id. For a reviewing court to find an abuse of discretion, it must be shown that the record contains no substantial evidence to support the trial judge's conclusion. Id.

We find no abuse of discretion in the trial court's revocation of the defendant's community corrections sentence. In Bernita Hogan, this court cited State v. Dye, 715 S.W.2d 36, 40 (Tenn. 1986), for the proposition that before a trial court may revoke a defendant's probation based on the defendant's nonpayment of costs or fines, it must first determine whether the defendant's nonpayment was willful. However, in the case at bar, the defendant pled guilty to violating his sentence based on a warrant that alleged not only that he had failed to pay court costs, but also that

he had tested positive for drugs, failed to complete his required community service work, and failed to maintain regular employment. As such, the trial court correctly found that the defendant had clearly violated the terms of his sentence. The trial court was not required to further inquire into the defendant's ability to pay court costs.

### **CONCLUSION**

\_\_\_\_\_ We conclude that the trial court did not abuse its discretion in revoking the defendant's community corrections sentence and reinstating his eight-year sentence in the Department of Correction. Accordingly, we affirm the judgment of the trial court.

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ALAN E. GLENN, JUDGE